

1 James R. Condo (#005867)
 2 Kristine L. Gallardo (#033975)
 3 SNELL & WILMER L.L.P.
 4 One Arizona Center
 5 400 E. Van Buren, Suite 1900
 6 Phoenix, Arizona 85004-2202
 7 Telephone: (602) 382-6000
 8 Facsimile: (602) 382-6070
 9 jcondo@swlaw.com
 10 kgallardo@swlaw.com

11 Richard B. North, Jr. (admitted *pro hac vice*)
 12 Georgia Bar No. 545599
 13 Matthew B. Lerner (admitted *pro hac vice*)
 14 Georgia Bar No. 446986
 15 NELSON MULLINS RILEY & SCARBOROUGH
 16 LLP
 17 201 17th Street, NW / Suite 1700
 18 Atlanta, GA 30363
 19 Telephone: (404) 322-6000
 20 Facsimile: (404) 322-6050
 21 richard.north@nelsonmullins.com
 22 matthew.lerner@nelsonmullins.com

23 *Attorneys for Defendants*
 24 *C. R. Bard, Inc. and*
 25 *Bard Peripheral Vascular, Inc.*

26 **IN THE UNITED STATES DISTRICT COURT**
 27 **FOR THE DISTRICT OF ARIZONA**

28 IN RE: Bard IVC Filters Products Liability
 29 Litigation

30 No. 2:15-MD-02641-DGC

31 **DEFENDANTS' UNOPPOSED**
 32 **MOTION FOR LEAVE TO FILE**
 33 **UNDER SEAL EXHIBIT IN**
 34 **SUPPORT OF PLAINTIFFS'**
 35 **STATEMENT REGARDING**
 36 **JOINT NOTICE EXHIBIT F**

37 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively "Bard")
 38 hereby respectfully move this Court, pursuant to the Stipulated Protective Order (Doc. 269),
 39 Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for leave to file under
 40 seal the document that Plaintiffs attach in support of their statement regarding Joint Notice
 41 Exhibit F (Track 3 Direct-Filed Cases Where the Parties Do Not Agree to the Venue
 42 Identified in the Short Form Complaints). The document attached by Plaintiffs (the

1 “Exhibit”) contains certain medical information, trade secrets, and confidential information
 2 that are protected under the Stipulated Protective Order, warranting protection from public
 3 disclosure. Specifically, it contains all of Bard’s IVC Filter sales data from 2002 through
 4 2016. Accordingly, there is good cause to grant Defendants’ Motion for Leave to File Under
 5 Seal. Plaintiffs do not oppose this Motion.

ARGUMENT AND CITATION OF AUTHORITY

7 “When a court grants a protective order for information produced during discovery,
 8 it already has determined that ‘good cause’ exists to protect this information from being
 9 disclosed to the public by balancing the needs for discovery against the need for
 10 confidentiality.” *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213
 11 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-1780-PHX-
 12 JAT, 2012 WL 2260928 at *2 (D. Ariz. June 15, 2012) (sealing exhibits related to “Medicis’
 13 marketing strategy, Acella’s product formulation,...various e-mails and deposition
 14 transcripts, viscosity test data, sales and marketing information, and various other
 15 documents” because “[m]uch of this information has been previously sealed by the Court,
 16 has been designated as confidential by the parties pursuant to the protective order in this
 17 case, or could otherwise potentially harm the parties if released publicly because of its
 18 confidential and sensitive nature.”).

19 The Exhibit at issue in Bard’s Motion contains highly competitive, confidential,
 20 proprietary information that warrants protection under Federal Rule of Civil Procedure
 21 26(c)(1)(G) because the Exhibit and its underlying data are not made public by Bard and, if
 22 obtained by Bard’s competitors, could give an unfair economic advantage to those
 23 competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL 737485,
 24 at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786
 25 (3d Cir. 1994)). The Exhibit contains Bard’s national sales data organized by filter model,
 26 year, and state, and was produced to Plaintiffs as “Confidential – Subject to Protective
 27 Order” on each page pursuant to Stipulated Protective Order (Doc. 269) ¶ 6. Moreover, this
 28 highly sensitive sales data has no bearing whatsoever to Plaintiffs’ substantive claims, and

1 is only being submitted by Plaintiffs as part of a jurisdictional dispute. The public has no
 2 interest in this information, but Bard's competitors would find substantial value in this data
 3 and put Bard at a competitive disadvantage.

4 The public disclosure of these exhibits would reveal confidential, proprietary and
 5 trade secret information and would create a heightened risk of irreparable harm to Bard's
 6 competitive business concerns. Further, its inclusion in the public record would not only
 7 harm Bard because of the trade secrets and confidential information it contains, but it would
 8 also eviscerate the significant time and resources Bard has expended in protecting its
 9 business information.

10 Accordingly, good cause exists for sealing the Exhibit at issue.

11 RESPECTFULLY SUBMITTED this 26th day of July, 2019.

12 s/Richard B. North, Jr.

13 Richard B. North, Jr.
 14 Georgia Bar No. 545599
 15 Matthew B. Lerner
 16 Georgia Bar No. 446986
 17 NELSON MULLINS RILEY & SCARBOROUGH, LLP
 18 Atlantic Station
 201 17th Street, NW / Suite 1700
 19 Atlanta, GA 30363
 20 PH: (404) 322-6000
 21 FX: (404) 322-6050
 22 richard.north@nelsonmullins.com
 23 matthew.lerner@nelsonmullins.com

24 James R. Condo (#005867)
 25 Kristine L. Gallardo (#033975)
 26 SNELL & WILMER L.L.P.
 27 One Arizona Center
 28 400 E. Van Buren
 Phoenix, AZ 85004-2204
 PH: (602) 382-6000
 FX: (602) 382-6070
 JCondo@swlaw.com
 KGallardo@swlaw.com

26
 27
 28
 Attorneys for Defendants C. R. Bard, Inc. and
 Bard Peripheral Vascular, Inc.